IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.117 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO.118 OF 2005

Mr. Deepak H. Shah ...Petitioner.

V/s

State of Maharashtra
and Ors. ...Respondents.

Mr. M.C. Shah i/b Mr. Ajay K. Rao for the petitioners.

Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.
DATE: 17th March, 2005

P.C.:

1. Heard the learned Counsel for the petitioner.

2. Petitioner is challenging the issuance of process by the learned Magistrate on the complaint filed by the complainant under section 138 read with section 141 of the Negotiable Instruments Act.

3. It is submitted that the accused No.2 alone is managing the business of the firm and other accused are not concerned in any way with the business of the firm. It is further averred in para 12 of the petition that the accused have paid an amount of Rs 5.20 lakhs to the respondent No.2 towards the total amount of the said two impugned cheques being Rs 7,61,100/-. On the last occasion, the matter was

specifically adjourned in order to enable the petitioner to produce any evidence to show that the averments made in para 12 of the petition are true and correct. Initially, the matter had appeared on board on 28/2/2005. However, none appeared on behalf of the petitioner and the matter was, therefore, adjourned to 1/3/2005 when specifically time was granted to the petitioner to produce receipts to show that the averments made in para 12 of the petition are correct. Leave to amend was also granted. However, today, no receipts have been produced. The submission is made by the learned Counsel for the petitioner that the accused No.2 alone is responsible for the management of the firm. This issue cannot be decided at this stage as there is specific averment in the complaint to the effect that accused No.1 is a partnership firm and the accused Nos. 2 to 7 are partners of accused No.1 and are attending day-to-day business of accused No.1. In view of this, it will not be possible to decide at this stage whether the petitioner was in charge of the business or not unless the evidence is led in the Trial Court. Criminal Writ Petitions are therefore rejected. All questions raised in these petitions are kept open.

V.M. KANADE, J.